

Annual Survey of Massachusetts Law

Volume 1959

Article 2

1-1-1959

Foreword

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Recommended Citation

Aldrich, Bailey (1959) "Foreword," *Annual Survey of Massachusetts Law*: Vol. 1959, Article 2.

FOREWORD

As the ANNUAL SURVEY OF MASSACHUSETTS LAW completes its sexennial year, and we enter our bissextile one (which will lead me, as representing the lesser partner, presently to make a proposal), it is my privilege to write a brief foreword to Volume 6. My predecessors in previous volumes have left very little unsaid. The vigorous continuation of this ambitious work, after the first blush of enthusiasm on the part of authors and prospective authors must naturally have dimmed, is convincing proof both of its value and of its public acceptance. While most of us attempt to keep current with the Advance Sheets in general, and with other matters affecting our individual interests in particular, review, all in one place, of what we have learned and, more important, of what we should have learned, cannot but be welcome. From such chapters as I have studied — like my predecessors I confess no ability to judge the whole — the standard of excellence has been maintained. This is a tribute not only to the authors, but, I suspect, to the ability of the principal court which they are reviewing.

This brings me, although for a different reason, to my "proposal." The federal courts of this district and circuit are charged, "not with making the law of Massachusetts but with determining, following and applying it."¹ The occasion sometimes arises, however, when there is no, or no significant, word to be found in the Massachusetts Reports. The duty of prophesying what the Supreme Judicial Court may decide is an agreeable challenge. That court may, in due course, find what we said persuasive: see, e.g., *Lavoie's Case*² and *Monroe Stationers & Printers, Inc. v. Munroe Stationers, Inc.*,³ or it may not. Cf. *Skil Corp. v. Barnet*.⁴ But even if no new principles are involved, I believe the well-read practitioner might sometimes like to consider current federal opinions involving Massachusetts law. In the present volume there are references to only one federal case, *Crown Kosher Super Market of Mass., Inc. v. Gallagher*,⁵ which is presently on appeal. The important case of *State Street Trust Co. v. United States*⁶ might well have found itself in Chapter 2, even though primarily it involved a question of federal taxes. *Metropolitan Coal Co. v. Johnson*⁷ belongs in Chapter 3, as does, perhaps, *City of Boston v. Boston Edison Co.*,⁸

¹ McPhail v. L. S. Starrett Co., 257 F.2d 388, 392 (1st Cir. 1958).

² 334 Mass. 403, 407-408, 135 N.E.2d 750, 752 (1956).

³ 332 Mass. 278, 282, 124 N.E.2d 526, 528 (1955).

⁴ 337 Mass. 485, 489-491, 150 N.E.2d 551, 554-555 (1958).

⁵ 176 F. Supp. 466 (D. Mass. 1959).

⁶ 263 F.2d 635 (1st Cir. 1959).

⁷ 265 F.2d 173 (1st Cir. 1959).

⁸ 260 F.2d 872 (1st Cir. 1958).

which, in any event, should be in Chapter 17. *Sears v. Pauly*⁹ might be in Chapter 4, *Venus Wheat Wafers, Inc. v. Venus Foods, Inc.*¹⁰ in Chapter 5, and *Shanahan v. George B. Landers Construction Co.*,¹¹ *United States v. Farrington*,¹² and *United States v. D. C. Loveys Co.*¹³ in Chapter 6, and *Plasteel Products Corp. v. Eisenberg*¹⁴ in that chapter or elsewhere. In the next volume I would be happy to see the recent decisions of the local federal courts dealing with Massachusetts law either interlarded into the appropriate chapters, or separately treated and criticized.

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*United States Court of Appeals
for the First Circuit
Boston, Massachusetts
February 17, 1960*

⁹ 261 F.2d 304 (1st Cir. 1958).

¹⁰ 174 F. Supp. 633 (D. Mass. 1959).

¹¹ 266 F.2d 400 (1st Cir. 1959).

¹² 172 F. Supp. 797 (D. Mass. 1959).

¹³ 174 F. Supp. 44 (D. Mass. 1959), now on appeal.

¹⁴ 170 F. Supp. 100 (D. Mass. 1959), *aff'd*, 271 F.2d 354 (1st Cir. 1959).